

§ 3560.153

tenant certification form will always be a first day of the month.

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c). Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

(v) Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

(vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer.

(3) The Agency maintains the right to independently verify tenant eligibility information.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.152(a)(1), implementation of the words "Be a United States citizen or qualified alien, and" was delayed indefinitely.

§ 3560.153 Calculation of household income and assets.

(a) Annual income will be calculated in accordance with 24 CFR 5.609.

(b) Adjusted income will be calculated in accordance with 24 CFR 5.611.

§ 3560.154 Tenant selection.

(a) *Application for occupancy.* Borrowers must use tenant application forms that collect sufficient information to properly determine household eligibility and to enable the Agency to monitor compliance with the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title VI of the Civil Rights Act of 1964 during compliance reviews. At a minimum, borrowers must use application forms that collect the following information:

(1) Name of the applicant and present address;

(2) Number of household members and their birthdates;

(3) Annual income information calculated in accordance with § 3560.153(a);

(4) Adjustments to income calculated in accordance with § 3560.153(b);

(5) Net assets calculated in accordance with § 3560.153(c);

(6) Indication of a need for a unit accessible to individuals with disabilities and any disability adjustments to income;

(7) Certification by the applicant that the unit will serve as the household's primary residence, and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11;

(8) Signature of the applicant and date;

(9) Race, ethnicity, and sex designation. The following disclosure notice shall be used:

"The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname," and

(10) Social security number.

(b) *Additional information.* Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information will be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

(c) *Application submission.* Borrowers must establish when applications may be submitted. Information on the place and times for tenant application submission must be documented in the housing project's management plan and Affirmative Fair Housing Marketing Plan.

7 CFR Ch. XXXV (1-1-07 Edition)

(d) *Selection of eligible applicants.* (1) Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria are contained in the borrower's management plan. Borrower established selection criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

(2) Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

(e) *Recordkeeping.* Borrowers must retain all tenant application forms for at least 3 years. The Agency may require borrowers to submit application information for Agency review.

(f) *Waiting lists.* (1) When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

(2) The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application (see paragraph (a) of this section), they must be notified in writing within 10 days of the items that are needed for the application to be considered complete and that priority will not be established until the additional items are received.

(3) The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the servicing office.

(4) Within 10 days of receipt of a complete application, the Borrower must

notify the applicant in writing that he has been selected for immediate occupancy, placed on a waiting list, or rejected.

(5) Selections from the completed applications on the waiting list shall be made in the following priority order:

- (i) Very low-income applicants;
- (ii) Low-income applicants; and
- (iii) Moderate-income applicants.

(g) *Priorities and preferences for admission.* (1) Eligible applicants that meet the following conditions must be given priority for occupancy over all other tenants regardless of income. Such applicants, however, will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

(i) Persons who require the special design features of a unit accessible to individuals with disabilities will have priority only for units with these features.

(ii) In congregate housing facilities, persons who agree to use the services provided by the facility will have priority over other applicants.

(2) Eligible applicants that meet any of the following conditions must be given priority over other applicants in their same income category.

(i) The applicant has a Letter of Priority Entitlement (LOPE) issued in accordance with § 3560.660(c).

(ii) The applicant was displaced from Agency-financed housing but was not issued a LOPE.

(iii) The applicant was displaced in a Federally declared disaster area.

(3) Borrowers receiving Section 8 project-based assistance may establish preferences in accordance with U.S. Department of Housing and Urban Development (HUD) regulations. The use of such preferences must be documented in the project's management plan.

(h) *Notices of ineligibility or rejection.* Borrowers must provide written notification to applicants who are determined to be ineligible or who are rejected for occupancy. Notices of ineligibility or rejection must give specific reasons for the ineligibility determination or rejection and, in accordance with § 3560.160, the notice must advise the applicant of "the right to respond

to the notice within ten calendar days after receipt” and of “the right to a hearing in accordance with § 3560.160 which is available upon request.” When an applicant is rejected based on the information from a credit bureau report, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

(i) *Purging waiting list.* Procedures used by borrowers to purge waiting list must be documented in the project’s management plan and must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing. At a minimum, borrowers must document removal of any names from the waiting list with the time and date of the removal. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

(j) *Criminal activity.* Borrowers may deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

EFFECTIVE DATE NOTE: At 70 FR 8503, Feb. 22, 2005, in § 3560.154(a)(7), implementation of the words “* * * and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11 * * *” was delayed indefinitely.

§ 3560.155 Assignment of rental units and occupancy policies.

(a) *General.* Available rental units are assigned in accordance with the requirements of this section and the priorities and preferences outlined in § 3560.154.

(b) *Rental units accessible to individuals with disabilities.* If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, borrowers may rent the unit to a non-disabled tenant subject to the inclusion of a lease provision that requires the tenant to vacate the unit within 30 days of notification from management that an eligible individual with disabilities requires the unit and provided the accessible unit has been marketed as an accessible unit, outreach has been

made to organizations representing the disabled, and marketing of the unit as an accessible unit continues after it has been rented to a tenant who is not in need of the special design features.

(c) *Transfer of existing tenants within a housing project.* When a rental unit becomes available for occupancy and an eligible tenant in the housing project is either over housed or under housed as provided for in paragraph (e) of this section, the borrower must use the available unit for the over housed or under housed tenant, if suitable, prior to selecting an eligible applicant from the waiting list.

(d) *Applicant placement.* When a specific rental unit type becomes available for occupancy, borrowers must select eligible applicants suitable for the available unit according to the priorities established in § 3560.154.

(e) *Occupancy policies.* Borrowers must establish occupancy policies for each housing project. Households living in a rental unit with more bedrooms than persons in the household will be considered over housed and must be relocated in accordance with paragraph (c) of this section. Households under housed as defined by the project’s occupancy standards must be relocated in accordance with paragraph (c) of this section. Borrowers with no one-bedroom units in a housing project may make an exception to this requirement in their occupancy policies. In addition, a borrower’s occupancy policies must establish:

(1) Reasonable standards for determining when a tenant household is considered under housed. The standards will describe the maximum number of persons that may occupy units of a given size based on occupancy guidelines provided by the Agency or another governmental source;

(2) The order in which eligible applicants and existing tenants will be housed or re-housed; and

(3) How fair housing requirements will be met, including how reasonable accommodations will be made for applicants and tenants with disabilities.

(f) *Agency concurrence.* The Agency must concur with a borrower’s occupancy rules prior to initial occupancy